

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

WALTER J. BARBEE,

Petitioner,

V.

## STATE OF WASHINGTON,

## Respondent.

No. C09-5667 RBJ/KLS

## ORDER TO AMEND

This habeas corpus petition has been referred to United States Magistrate Judge Karen L.

Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Petitioner Walter J.

Barbee seeks federal habeas corpus relief pursuant to 28 U.S.C. § 2254. Dkt. 1-2.

Mr. Barbee has failed to name the correct Respondent, thereby depriving this Court of personal jurisdiction. *United States v. Giddings*, 740 F.2d 770, 772 (9th Cir. 1984). 28 U.S.C. § 2243 requires that writs are to be directed “to the person having custody of the person detained.” The proper respondent in a federal habeas corpus petition is the petitioner’s “immediate custodian.” *Demjanjuk v. Meese*, 784 F.2d 1114, 1115 (D.C.Cir. 1986). A custodian “is the person having a day-to-day control over the prisoner. That person is the only one who can produce ‘the body’ of the petitioner.” *Guerra v. Meese*, 786 F.2d 414, 416 (D.C.Cir. 1986).

Therefore, Mr. Barbee's custodian for purposes of his habeas corpus petition challenging the execution of his Washington state sentence, is the warden/superintendent of the prison where he is currently confined. See, e.g., *Brittingham v. United States*, 982 F.2d 378 (9th Cir. 1992).

*Dunne v. Henman*, 875 F.2d 244, 249 (9th Cir. 1989). According to his petition, Mr. Barbee is

1 currently confined at the McNeil Island Corrections Center (MICC) in Steilacoom, Washington.

2 | The warden of MICC is Ron Van Boening.

3      Accordingly, it is **ORDERED**:

(1) Mr. Barbee shall amend his petition to name Ron Van Boening as Respondent.

Mr. Barbee may amend his petition by correcting the first page only and providing the Court

with two copies of the amended first page reflecting the properly named Respondent. Mr.

Barbee shall provide the court with two copies of the amended first page of his petition **on or**

before December 11, 2009.

9 before December 11, 2009.

(2) The Court Clerk is directed to send a copy of this Order and a form 28 U.S.C. §

11 | 2254 petition to Mr. Barbee, and to note this matter for the Court's **December 11, 2009** calendar.

DATED this 23rd day of November, 2009.

*W. L. M.*

**Karen L. Strombom**  
**United States Magistrate Judge**